Liberal Construction

October 2007

Employment Security Department
WASHINGTON STATE

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WASHINGTON STATE

Highlights of Liberal Construction Study

October 2007

Why we did this study

In recent legislative sessions, the state Legislature directed the department to conduct a series of studies to learn more about the unemployment-insurance system and to determine the effects of law changes

This study was specifically mandated by Engrossed House Bill 2255, which required that it be completed in 2006 and again in 2007.

The goal of both studies was to determine the effects of liberally construing the laws in favor of unemployment-insurance claimants.

The complete report is available online at www.studies.go2ui.com.

For more information, contact the Office of Policy & Legislation at 360-902-9457.

What we found

Background: Historically, the preamble to the state Employment Security Act (RCW 50.01.010) has included the statement ". . . this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum."

Since June 2003, that language has been removed, temporarily reinstated and was finally made permanent again in the 2006 legislative session.

On the national level, the Supreme Court has ruled that federal unemployment laws be interpreted liberally. The federal Department of Labor has consistently supported this position as well.

Definition: "Liberal construction" is a broad interpretation of the law that considers other factors, such as intent and case history, in addition to the words used within a specific statute.

Study: To determine the effects on the unemployment system, the study team reviewed eligibility decisions issued both when liberal construction was specifically referenced in RCW 50.10.010 and when the phrase was removed.

Findings: Liberal construction is a factor in very few claims-related decisions. Throughout the course of both the 2006 study and the expanded 2007 study:

- Agency adjudicators cited liberal construction in 35 of approximately 523,000 decisions.
- The Office of Administrative Hearings cited liberal construction in 62 of more than 120,000 decisions.
- The department's Commissioner Review Office estimates that liberal construction is a factor in no more than half a dozen cases per year.

The courts did not issue any published decisions during the period in which liberal construction was removed from the law. However, a recent court decision did rely heavily on liberal construction and will allow people in approved training to receive benefits if they quit an unsuitable job, which may affect the trust fund in the future.

Conclusions: Based on the findings, both the 2006 and 2007 study teams concluded that liberal construction has little effect on the unemployment-insurance trust fund. The number of cases in which it is cited as a factor is miniscule compared to the total number of decisions.

It is important to note, however, that this study does not capture the full effect of liberal construction on the unemployment system. Liberal construction is a philosophy or approach and is, therefore, almost impossible to quantify. While rarely referenced specifically in written decisions, the concept of liberal construction may contribute to the decision of whether or not to approve benefits.

With or without the words "liberal construction" included in the law, it is likely that eligibility decisions would be made with an eye toward relieving economic insecurity for unemployed workers by interpreting eligibility for benefits broadly.

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Introduction

The goal of this study is to determine the impacts of having "liberal construction" in the preamble of the Employment Security Act (RCW 50.01.010). To do so, the study team compared eligibility decisions from the time period when "liberal construction" was included in the law to decisions made in the period when "liberal construction" was removed. In reviewing these decisions, the study team assessed whether this language was a factor in the final decision.

Background

The law

Until June 19, 2003, the preamble to the state Employment Security Act (RCW 50.01.010) included the statement ". . . this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum."[1]

On June 20, 2003, that language was removed when a new law (Second Engrossed Senate Bill 6097) went into effect.

The language was reinstated on April 22, 2005 (Engrossed House Bill (EHB) 2255). The language was due to expire again on June 30, 2007, but was made permanent during the 2006 legislative session (Engrossed Substitute Senate Bill 6885). EHB 2255 also directed Employment Security to study the effects of liberal construction.

What does "liberal construction" mean?

Laws are subject to interpretation. They may have multiple meanings and are sometimes unclear. "Construction" is the process of interpreting a law or phrase to determine its meaning in a specific situation. Generally, there are two types of construction: strict and liberal.

"Strict construction" looks only at the literal words of the law, and applies those words narrowly to the case at hand. It does not consider evidence drawn from other cases or experiences.

"Liberal construction" considers other factors when deciding the meaning of a law as applied to a given case. This usually means giving the written words a broad interpretation by looking at the legislature's purpose and intent in adopting the law.

Liberal construction on a national basis

Nine states have either the language "liberal construction" or "liberally construed" in their statute. Another 37 states have case law saying that the statute should be liberally construed. The remaining five states either have no case law or have case law stating the law should be strictly construed when exempting employers from payment of unemployment taxes.

In 1947, the United States Supreme Court held that the federal unemployment law was to be interpreted liberally. United States v. Silk, 331 U.S. 704, 712 (1947).

[1] See Appendix A for full text.

> As the federal social security legislation is an attack on recognized evils in our national economy, a constricted interpretation of the phrasing by the courts would not comport with its purpose. Such an interpretation would only make for a continuance, to a considerable degree, of the difficulties for which the remedy was devised and would invite adroit schemes by some employers and employees to avoid the immediate burdens at the expense of the benefits sought by the legislation.

This position was restated in 1955 by the Third Circuit of the Court of Appeals. Farming, Inc. v. Manning, 212 F.2d 779, 782.[2]

Based on these two rulings, the United States Department of Labor (DOL) "has long taken the position that, because FUTA is a remedial statute aimed at overcoming the evils of unemployment, it is to be liberally construed to effectuate its purposes and exemptions to its requirements are to be narrowly construed."[3] DOL has issued several unemployment-insurance program letters over the years in which they restate their position on this subject.

The mere absence of the words "liberally construe" from a state's statute does not represent a compliance issue under federal law. Instead, DOL reviews how the state administers its laws. If a state was to include a mandate for strict construction in its statute, and interpreted the unemployment laws narrowly as a result, DOL could raise a compliance issue under federal law.

Liberal construction in Washington

Washington courts have historically upheld the concept of "liberal construction" of the unemployment-insurance program. In cases where the law is unclear or ambiguous as to whether a class of workers should be covered under the law, the court has held that exemptions from coverage should be narrowly drawn. In cases where an individual's eligibility for benefits must be decided on the specific facts of the case, the courts have focused on the fact that the Employment Security Act is remedial legislation aimed at compensating those who are involuntarily unemployed. The courts also have held that when the law is clear, construction is not necessary. But the preamble may be used to resolve ambiguities and, if possible, the law will be construed consistent with its purpose.[4]

Findings

The effect of the mandate for liberal construction, or its removal, on the unemployment-insurance program or trust fund cannot be determined with specificity, but is probably minimal. The term has been interpreted by the courts on numerous occasions over the years. However, it cannot be said that these cases would have been resolved differently if the liberal construction clause had not been included in the preamble from the beginning.

The Employment Security Act is remedial legislation. The general rule of statutory construction is that remedial statutes are broadly interpreted unless there is a specific legislative direction that it be strictly construed. As with the 37 other states that do not have a requirement in statute for liberal construction, it is likely many of the Washington cases would have been decided in the same way if the mandate for liberal construction were not in the preamble.

[2] See Appendix B for the full text of both decisions.
[3] See, for example, UI Program Letters 43-91, 30-96, and 22-97.
[4] Appendix C contains a summary of the published Washington cases.

In addition, the preamble is not substantive law. The fact that the legislature removed the liberal construction language did not then impose upon the department the obligation to strictly interpret the statute. Even without this phrase, the preamble discusses the evils of unemployment and provides for the setting aside of reserves to aid those who are unemployed through no fault of their own. The Act remained a remedial statute even when the liberal construction language was removed.

Finally, the state is required to administer its unemployment insurance program in a manner that does not conflict with federal law. In doing so, the department relies heavily on guidelines issued by DOL. The U.S. Supreme Court and 3rd Circuit Court of Appeals have held the federal law is to be construed liberally and DOL has repeatedly stated its expectation that the states will liberally construe their unemployment insurance programs to meet the intent of the law.

Scope

Section 7 of EHB 2255 directed Employment Security to report on the impact of sections 2 and 3 of the bill. This study covers the effect of section 2; the effect of section 3 is the topic of the weekly benefit amount study (available online at www.studies.go2ui.com).

The original report on liberal construction (also online at www.studies.go2ui.com) focused on eligibility decisions issued during 2003-2006. This update expands on that scope and includes eligibility decisions through September 2007 .

Decision-making process

When an individual applies for unemployment benefits, an agency adjudicator determines whether he or she is eligible for benefits. If the individual or the individual's employer disagrees with the decision, they can file an appeal with the Office of Administrative Hearings (OAH), a separate state agency. If they disagree with the decision by OAH, they can appeal to Employment Security's Commissioner Review Office (CRO). If they still disagree, they may file an appeal in superior court.

Decisions issued

In the original study, the study team only reviewed adjudicator decisions issued in 2005. Some 416,800 decisions were issued over the year; three cited "liberal construction" as a factor in the decision. For this update, the study team reviewed the approximately 105,000 adjudicator decisions issued between April and September 2007; 32 cited "liberal construction" as a factor. [5] Although this represents a slight increase, it remains a very small percentage of the total number of decisions.

In the original study, the study team also reviewed OAH decisions issued from June 2003 through June 2006. During that three year period, OAH issued 98,501 decisions; 53 decisions, or just over .0005 percent, cited liberal construction as a factor in the final ruling. Since October 2006, OAH has issued about 23,000 decisions, citing liberal construction as a factor in just nine cases (or .0004 percent).

[5] The department has implemented a new imaging system for its unemployment records, with improved search capabilities. The increase in the number of decisions citing liberal construction may be due, in part, to an improved ability to locate these decisions. The new system only includes decisions issues since April 2007.

Data are not available for decisions issued by CRO. However, discussion with the chief review judge indicates that liberal construction is a factor in no more than half a dozen cases per year, generally in very close situations, and was not a significant factor in any decisions issued since October 2006. CRO reviews approximately 4,800 cases each year.

There were no published court decisions issued during the period in which liberal construction was eliminated from the statute. As a result, it is not known whether the courts would have held that the elimination of this language should affect the department's decision-making processes.

One recent court decision, however, relied heavily on the principle of liberal construction and changed precedent followed by the department for the past 30 years.[6] On September 17, 2007, Division I of the Court of Appeals published a decision in the case of Gaines v. ESD. According to the ruling, a person in approved training can quit an unsuitable job and still collect unemployment benefits. The department has historically treated such cases as voluntary quits and has not allowed people to collect benefits. Because the decision was very recent, the department has not yet determined how many people will now be granted benefits or how additional payments will affect the trust fund.

Other factors

The review of eligibility decisions and court cases included in this study cannot capture the full effect of liberal construction on the unemployment-insurance system. Liberal construction is a philosophy or approach and is, therefore, next to impossible to quantify. While rarely specifically referenced in written decisions, the concept of liberal construction may contribute to the decision of whether or not to approve benefits.

In an effort to increase consistency in decision-making, adjudication staff began using an electronic fact-finding system in October 2002. The system is entirely fact-based and asks a series of questions that lead to a definitive answer. The concept of liberal construction is not included in the system at any point, although staff may cite it in their decisions, primarily when facts weigh equally for and against the claimant.

Further, OAH decisions generally cite liberal construction only in cases in which the facts appear to weigh equally. Since the Employment Security Act is remedial, it is likely many of these decisions would be the same if liberal construction did not exist.

Conclusions

The study team came to the same conclusion in this expanded study as it did in the 2006 study: liberal construction in decision making has little, if any, effect on the unemployment trust fund. The number of cases in which it is cited as a factor in the decision about a claimant's eligibility is miniscule compared to the total number of decisions issued. With or without the words "liberal construction" included in the law, it is likely that eligibility decisions would be made with an eye toward relieving economic insecurity for unemployed workers by drawing exemptions to coverage narrowly and interpreting eligibility for benefits broadly.

[6] In its ruling, the Court stated the mandate for liberal construction in RCW 50.01.010 was "accidentally removed" by the legislature in 2003 but had been reinstated.

Appendices

Mandate for this study

Chapter 133 Laws of 2005 § 7 (EHB 2255)

RCW 50.01.020(1):

> By October 1, 2006, and October 1, 2007, the employment security department must report to the appropriate committees of the legislature on the impact, or projected impact, of sections 2 and 3, chapter 133, Laws of 2005 on the unemployment trust fund in the three consecutive fiscal years beginning with the year before the report date.

From section 2, chapter 133, Laws of 2005:

> …and that this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.

Study team:

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See following pages for Appendices A-C.

See: Duhaime's Online Legal Dictionary © 2006 and Black's Law Dictionary, 7th Ed., © 2000 for definition of terms.

Thanks to the National Employment Law Project for researching the statutes and case law of other states related to liberal construction.

RCW 50.01.010 Preamble

Whereas, economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state; involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. Social security requires protection against this greatest hazard of our economic life. This can be provided only by application of the insurance principle of sharing the risks, and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing powers and limiting the serious social consequences of relief assistance. The state of Washington, therefore, exercising herein its police and sovereign power endeavors by this title to remedy any widespread unemployment situation which may occur and to set up safeguards to prevent its recurrence in the years to come. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, and that this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.

[2005 c 133 § 2; 2003 2nd sp.s. c4§ 1; 1945 c 35 § 2; Rem. Supp. 1945 § 9998-141. Prior: 1937 c 162 § 2.]

U.S. Supreme Court

U.S. V. SILK , 331 U.S. 704 (1947)

331 U.S. 704

UNITED STATES
v.
SILK et al.

HARRISON
v.
GREYVAN LINES, Inc.

Nos. 312 and 673.

Argued March 10, 11, 1947.
Decided June 16, 1947.

[U.S. v. Silk 331 U.S. 704 (1947)]

Mr. Robert L. Stern, of Washington, D.C., for petitioner.

Ralph F. Glenn, of Topeka, Kan., for respondent Silk.

Wilbur E. Benoy, of Columbus, Ohio, for respondent Greyvan Lines.

Mr. Justice REED delivered the opinion of the Court.

We consider together the above two cases. Both involve suits to recover sums exacted from businesses by the Commissioner of Internal Revenue as employment taxes on employers under the Social Security Act.[1] In both instances the taxes were collected on assessments made administratively by the Commissioner because he concluded the persons here involved were employees of the taxpayers. Both cases turn on a determination as to whether the workers involved were employees under that Act or whether they were independent contractors. Writs of certiorari were granted, United States v. Silk, 329 U.S. 702 and Harrison v. Greyvan Lines, 329 U.S. 709 , because of the general importance in the collection of social security axes of de ciding what are the applicable standards for the determination of employees under the Act. Varying standards have been applied in the federal courts.[2] Respondent in No. 312, Albert Silk, doing business as the Albert Silk Coal Co., sued the United States, petitioner, to recover taxes alleged to have been illegally assessed and collected from respondent for the years 1936 through 1939 under the Social Security Act. The taxes were levied on respondent as an employer of certain workmen some of whom were engaged in unloading railway coal cars and the others in making retail deliveries of coal by truck.

Respondent sells coal at retail in the city of Topeka, Kansas. His coalyard consists of two buildings, one for an office and the other a gathering place for workers, railroad tracks upon which carloads of coal are delivered by the railroad, and bins for the different types of coal. Respondent pays those who work as unloaders an agreed price per ton to unload coal from the railroad cars. These men come to the yard when and as they please and are assigned a car to unload and a place to put the coal. They furnish their own tools, work when they wish and work for others at will. One of these unloaders testified that he worked as regularly 'as a man has to when he has to eat' but there was also testimony that some of the unloaders were floaters who came to the yard only intermittently.

Respondent owns no trucks himself but contracts with workers who own their own trucks to deliver coal at a uniform price per ton. This is paid to the trucker by the respondent out of the price he receives for the coal from the customer. When an order for coal is taken in the company office, a bell is rung which rings in the building used by the truckers. The truckers have voluntarily adopted a call list upon which their names come up in turn, and the top man on the list has an opportunity to deliver the coal ordered. The truckers are not instructed how to do their jobs, but are merely given a ticket telling them

where the coal is to be delivered and whether the charge is to be collected or not. Any damage caused by them is paid for by the company. The District Court found that the truckers could and often did refuse to make a delivery without penalty. Further, the court found that the truckers may come and go as they please and frequently did leave the premises without permission. They may and did haul for others when they pleased. They pay all the expenses of operating their trucks, and furnish extra help necessary to the delivery of the coal and all equipment except the yard storage bins. No record is kept of their time. They are paid after each trip, at the end of the day or at the end of the week, as they request.

The Collector ruled that the unloaders and truckers were employees of the respondent during the years 1936 through 1939 within the meaning of the Social Security Act and he accordingly assessed additional taxes under Titles VIII and IX of the Social Security Act and Subchapters A and C of Chapter 9 of the Internal Revenue Code. Respondent filed a claim for a refund which was denied. He then brought this action. Both the District Court and the Circuit Court of Appeals[3] thought that the truckers and unloaders were independent contractors and allowed the recovery.

Respondent in No. 673, Greyvan Lines, Inc., a common carrier by motor truck, sued the petitioner, a Collecter of Internal Revenue, to recover employment taxes alleged to have been illegally assessed and collected from it under similar provisions of the Social Security Act involved in Silk's case for the years or parts of years 1937 through the first quarter of 1942. From a holding for the respondent in the District Court petitioner appealed. The Circuit Court of Appeals affirmed. The chief question in this case is whether truckmen who perform the actual service of carrying the goods shipped by the public are employees of the respondent. Both the District Court and the Circuit Court of Appeals[4] thought that the truckmen were independent contractors.

The respondent operates its trucking business under a permit issued by the Interstate Commerce Commission under the 'grandfather clause' of the Motor Carrier Act 49 U.S.C.A. 301 et seq. 32 M.C.C. 719, 723. It operates throughout thirty-eight states and parts of Canada, carrying largely household furniture. While its principal office is in Chicago, it maintains agencies to solicit business in many of the larger cities of the areas it serves, from which it contracts to move goods. As early as 1930, before the passage of the Social Security Act, the respondent adopted the system of relations with the truckmen here concerned, which gives rise to the present issue. The system was based on contracts with the truckmen under which the truckmen were required to haul exclusively for the respondent and to furnish their own trucks and all equipment and labor necessary to pick up, handle and deliver shipments, to pay all expenses of operation, to furnish all fire, theft, and collision insurance which the respondent might specify, to pay for all loss or damage to shipments and to indemnify the company for any loss caused it by the acts of the truckmen, their servants and employees, to paint the designation 'Greyvan Lines' on their trucks, to collect all money due the company from shippers or consignees, and to turn in such moneys at the office to which they report after delivering a shipment, to post bonds with the company in the amount of $1,000 and cash deposits of $250 pending final settlement of accounts, to personally drive their trucks at all times or be present on the truck when a competent relief driver was driving (except in emergencies, when a substitute might be employed with the approval of the company), and to follow all rules, regulations, and instructions of the company. All contracts or bills of lading for the shipment of goods were to be between the respondent and the shipper. The company's instructions covered directions to the truckmen as to where and when to load freight. If freight was tendered the truckmen, they were under obligation to notify the company so that it could complete the contract for shipment in its own name. As remuneration, the truckmen were to receive from the company a percentage of the tariff charged by the company varying between 50 and 52% and a bonus up to 3% for satisfactory performance of the service. The contract was terminable at any time by either party. These truckmen were required to take a short course of instruction in the company's methods of doing business before carrying out their contractual obligations to haul. The company maintained a staff of dispatchers who issued orders for the truckmen's movements, although not the routes to be used, and to which the truckmen, at intervals, reported their positions. Cargo insurance was carried by the company. All permits, certificats and fran chises 'necessary to the operation of the vehicle in the service of the company as a motor carrier under any Federal or State Law' were to be obtained at the company's expense.

The record shows the following additional undisputed facts, not contained in the findings. A manual of instructions, given by the respondent to the truckmen, and a contract between the company and Local No. 711 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America were introduced in evidence. It suffices to say that the manual purported to regulate in detail the conduct of the truckmen in the performance of their duties, and that the agreement with the Union provided that any truckman must first be a member of the union, and that grievances would be referred to representatives of the company and the union. A company official testified that the manual was impractical and that no attempt was made to enforce it. We understand the union contract was in effect. The company had some trucks driven by truckmen who were admittedly company employees. Operations by the company under the two systems were

carried out in the same manner. The insurance required by the company was carried under a blanket company policy for which the truckmen were charged proportionately.

The Social Security Act of 1935 was the result of long consideration by the President and Congress of the evil of the burdens that rest upon large numbers of our people because of the insecurities of modern life, particularly old age and unemployment. It was enacted in an effort to coordinate the forces of government and industry for solving the problems.[5] The principal method adopted by Congress to advance its purposes was to provide for periodic payments in the nature of annuities to the elderly and compensation to workers during periods of unemployment. Employment taxes, such as we are here considering, are necessary to produce the revenue for federal participation in the program of alleviation. Employers do not pay taxes on certain groups of employees, such as agricultural or domestic workers but none of these exceptions are applicable to these cases. 811 and 907. Taxes are laid as excises on a percentage of wages paid the nonexempt employees. 804 and 901; I.R.C. 1410, 1600. 'Wages' means all remuneration for the employment that is covered by the Act, cash or otherwise. 811, 907; I.R.C. 1426(a), 1607(b). 'Employment' means 'any service, of whatever nature, performed * * * by an employee for his employer, except * * * agricultural labor et cetera.' 811(b), 907(c); I. R.C. 1426(b), 1607(c). As a corollary to the coverage of employees whose wages are the basis for the employment taxes under the tax sections of the social security legislation, rights to benefit payments under federal old age insurance depend upon the receipt of wages as employees under the same sections. 53 Stat. 1360, 202, 209(a), (b), (g), 205(c), (1), 42 U.S.C.A. 402, 409(a, b, g), 405(c)(1). See Social Security Board v. Nierotko, 327 U.S. 358, 162 A.L.R. 1445. This relationship between the tax sections and the benefit sections emphasizes the underlying purpose of the legislation-the protection of its beneficiaries from some of the hardships of existence. Helvering v. Davis, supra, 301 U.S. at page 640, 57 S.Ct. at page 908, 109 A.L. R. 1319. No definition of employer or employee applicable to these cases occurs in the Act. See 907(a) and I.R.C. 1607(h). Compare, as to carrier employment, I.R.C. 1532(d), as amended by P.L. 572, 79th Cong., 2d Sess., 1. Nothing that is helpful in determining the scope of the coverage of the tax sections of the Social Security Act has come to our attention in the legislative history of the passage of the Act or amendments thereto.

Since Congress has made clear by its many exemptions, such as, for example, the broad categories of agricultural labor and domestic service, 53 Stat. 1384, 1393, that it was not its purpose to make the Act cover the whole field of service to every business enterprise, the sections in question are to be read with the exemptions in mind. The very specificity of the exemptions, however, and the generality of the employment definitions[6] indicates that the terms 'employment' and 'employee,' are to be construed to accomplish the purposes of the legislation. As the federal social security legislation is an attack on recognized evils in our national economy, a constricted interpretation of the phrasing by the courts would not comport with its purpose. Such an interpretation would only make for a continuance, to a considerable degree, of the difficulties for which the remedy was devised and would invite adroit schemes by some employers and employees to avoid the immediate burdens at the expense of the benefits sought by the legislation.[7] These considerations have heretofore guided our construction of the Act. Buckstaff Bath House Co. v. McKinley, 308 U.S. 358; Social Security Board v. Nierotko, 327 U.S. 358, 66 S. Ct. 637, 162 A.L.R. 1445.

Of course, this does not mean that all who render service to an industry are employees. Compare Metcalf & Eddy v. Mitchell, 269 U.S. 514, 520, 173. Obviously the private contractor who undertakes to build at a fixed price or on cost-plus a new plant on specifications is not an employee of the industry thus served nor are his employees. The distributor who undertakes to market at his own risk the product of another, or the producer who agrees so to manufacture for another ordinarily cannot be said to have the employer-employee relationship. Production and distribution are different segments of business. The purposes of the legislation are not frustrated because the Government collects employment taxes from the distributor instead of the producer or the other way around.

The problem of differentiating between employee and an independent contractor or between an agent and an independent contractor has given difficulty through the years before social legislation multiplied its importance. When the matter arose in the administration of the National Labor Relations Act, 29 U.S.C.A. 151 et seq., we pointed out that the legal standards to fix responsibility for acts of servants, employees or agents had not been reduced to such certainty that it could be said there was 'some simple, uniform and easily applicable test.' The word 'employee,' we said, was not there used as a word of art, and its content in its context was a federal problem to be construed "in the light of the mischief to be corrected and the end to be attained." We concluded that, since that end was the elimination of labor disputes and industrial strife, 'employees' included workers who were such as a matter of economic reality. The aim of the Act was to remedy the inequality of bargaining power in controversies over wages, hours and working conditions. We rejected the test of the "technical concepts pertinent to an employer's legal responsibility to third persons for the acts of his servants." This is often referred to as power of control, whether exercised or not, over the manner of performing service to the

industry. Restatement of the Law, Agency, 220. We approved the statement of the National Labor Relations Board that "the primary consideration in the determination of the applicability of the statutory definition is whether effectuation of the declared policy and purposes of the Act comprehend securing to the individual the rights guaranteed and protection afforded by the Act." National Labor Relations Board v. Hearst Publications, 322 U.S. 111 , 120, 123, 124, 128, 131, 855, 856, 857, 859, 860.

Application of the social security legislation should follow the same rule that we applied to the National Labor Relations Act in the Hearst case. This, of course, does not leave courts free to determine the employer-employee relationship without regard to the provisions of the Act. The taxpayer must be an 'employer' and the man who receives wages an 'employee.' There is no indication that Congress intended to change normal business relationships through which one business organization obtained the services of another to perform a portion of production or distribution. Few businesses are so completely integrated that they can themselves produce the raw material, manufacture and distribute the finished product to the ultimate consumer without assistance from independent contractors. The Social Security Act was drawn with this industrial situation as a part of the surroundings in which it was to be enforced. Where a part of an industrial process is in the hands of independent contractors, they are the ones who should pay the social security taxes.

The long-standing regulations of the Treasury and the Federal Security Agency (H. Doc. 595, 79th Cong., 2d Sess.) recognize that independent contractors exist under the Act. The pertinent portions are set out in the margin.[8] Certainly the industry's right to control how 'work shall be done' is a factor in the determination of whether the worker is an employee or independent contractor. The Government points out that the regulations were construed by the Commissioner of Internal Revenue to cover the circumstances here presented. This is shown by his additional tax assessments. Other instances of such administrative determinations are called to our attention.[9]

So far as the regulations refer to the effect of contracts, we think their statement of the law cannot be challenged successfully. Contracts, however 'skillfully devised,' Lucas v. Earl, 281 U.S. 111, 115, should not be permitted to shift tax liability as definitely fixed by the statutes.[10]

Probably it is quite impossible to extract from the statute a rule of thumb to define the limits of the employer-employer relationship. The Social Security Agency and the courts will find that degrees of control, opportunities for profit or loss, investment in facilities, permanency of relation and skill required in the claimed independent operation are important for decision. No one is controlling nor is the list complete. These unloaders and truckers and their assistants are from one standpoint an integral part of the businesses of retailing coal or transporting freight. Their energy, care and judgment may conserve their equipment or increase their earnings but Greyvan and Silk are the directors of their businesses. On the other hand, the truckmen hire their own assistants, own their trucks, pay their own expenses, with minor exceptions, and depend upon their own initiative, judgment and energy for a large part of their success.

Both lower courts in both cases have determined that these workers are independent contractors. These inferences were drawn by the courts from facts concerning which there is no real dispute. The excerpts from the opinions below show the reasons for their conclusions.[11]

Giving full consideration to the concurrence of the two lower courts in a contrary result, we cannot agree that the unloaders in the Silk case were independent contractors.[12] They provided only picks and shovels. They had no opportunity to gain or lose except from the work of their hands and these simple tools. That the unloaders did not work regularly is not significant. They did work in the course of the employer's trade or business. This brings them under the coverage of the Act.[13] They are of the group that the Social Security Act was intended to aid. Silk was in a position to exercise all necessary supervision over their simple tasks. Unloaders have often been held to be employees in tort cases.[14]

There are cases, too, where driver-owners of trucks or wagons have been held employees[15] in accident suits at tort or under workmen's compensation laws. But we agree with the decisions below in Silk and Greyvan that where the arrangements leave the driver- owners so much responsibility the investment and management as here, they must be held to be independent contractors.[16] These driver-owners are small businessmen. They own their own trucks. They hire their own helpers. In one instance they haul for a single business, in the other for any customer. The distinction, though important, is not controlling. It is the total situation, including the risk undertaken, the control exercised, the opportunity for profit from sound management, that marks these driver- owners as independent contractors.
No. 312, United States v. Silk, is affirmed in part and reversed in part.
No. 673, Harrison v. Greyvan Lines, Inc., is affirmed.

Mr. Justice BLACK, Mr. Justice DOUGLAS and Mr. Justice MURPHY are of the view that the applicable principles of law, stated by the Court and with which they agree, require reversal of both judgments in their entirety.

Mr. Justice RUTLEDGE.

I join in the Court's opinion and in the result insofar as the principles stated are applied to the unloaders in the Silk case. But I think a different disposition should be made in application of those principles to the truckers in that case and in the Greyvan case.

So far as the truckers are concerned, both are borderline cases.[1] That would be true, I think, even if the so- called 'common law control' test were conclusive,[2] as the District Court and the Circuit Court of Appeals in each case seem to have regarded it.[3] It is even more true under the broader and more factual approach the Court holds should be applied.

I agree with the Court's views in adopting this approach and that the balance in close cases should be cast in favor of rather than against coverage, in order to fulfill the statute's broad and beneficent objects. A narrow, constricted construction in doubtful cases only goes, as indeed the opinion recognizes, to defeat the Act's policy and purposes pro tanto.

But I do not think it necessary or perhaps in harmony with sound practice, considering the nature of this Court's functions and those of the district courts, for us to undertake drawing the final conclusion generally in these borderline cases. Having declared the applicable principles of law to be applied, our function is sufficiently discharged by seeing to it that they are observed. And when this has been done, drawing the final conclusion, in matters so largely factual as the end result must be in close cases, is more properly the business of the district courts than ours.

Here the District Court and the Circuit Courts of Appeals determined the cases largely if not indeed exclusively by applying the so-called 'common law control' test as the criterion. This was clearly wrong, in view of the Court's present ruling. But for its action in drawing the ultimate and largely factual conclusion on that basis, the error would require remanding the causes to the District Courts in order for them to exercise that function in the light of the present decision.

I would follow that course, so far as the truckers are concerned.

Footnotes

[Footnote 1] Titles VIII and IX, Social Security Act, 49 Stat. 636 and 639, 42 U. S.C.A. 1001 et seq., 1101 et seq., as repealed in part 53 Stat. 1.

See Internal Revenue Code, chap. 9, subchap. A and C, 26 U.S.C.A. Int. Rev. Code, 1400 et seq., 1600 et seq.

[Footnote 2] Texas Co. v. Higgins, 2 Cir., 118 F.2d 636; Jones v. Goodson, 10 Cir., 121 F.2d 176; Deecy Products Co. v. Welch, 1 Cir., 124 F.2d 592, 139 A.L.R. 916; American Oil Co. v. Fly, 5 Cir., 135 F.2d 491, 147 A.L.R. 824; Glenn v. Beard, 6 Cir., 141 F.2d 376; Magruder v. Yellow Cab Co., 4 Cir., 141 F.2d 324, 152 A.L.R. 516; United States v. Mutual Trucking Co., 6 Cir., 141 F.2d 655; Glenn v. Standard Oil Co., 6 Cir., 148 F.2d 51, 53; McGowan v. Lazeroff, 2 Cir., 148 F.2d 512; United States v. Wholesale Oil Co., 10 Cir., 154 F.2d 745; United States v. Vogue, Inc., 4 Cir., 145 F.2d 609, 612; United States v. Aberdeen Aerie, No. 24, 9 Cir., 148 F.2d 655, 658; Grace v. Magruder, App.D.C., 148 F.2d 679, 680Ÿ681; Nevins, Inc. v. Rothensies, 3 Cir., 151 F.2d 189.

[Footnote 3] 10 Cir., 155 F.2d 356.

[Footnote 4] 7 Cir., 156 F.2d 412.

[Footnote 5] Message of the President, January 17, 1935, and Report of the Committee on Economic Security, H.Doc.No.81, 74th Cong., 1st Sess.; S.Rep. No.628, 74th Cong., 1s Sess.; S. Rep.No.734, 76th Cong., 1st Sess.; H.Rep. No.615, 74th Cong., 1st Sess.; H.Rep.No.728, 76th Cong., 1st Sess. Steward Machine Co. v. Davis, 301 U.S. 548 , 109 A.L.R. 1293; Helvering v. Davis, 301 U.S. 619 , 109 A. L.R. 1319.

[Footnote 6] See 53 Stat. 1384, 1393, 26 U.S.C.A. Int.Rev.Code, 1426(b), 1607(c), 'The term 'employment' means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any

service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him, irrespective of the citizenship or residence of either, exceptŸ.' Compare 49 Stat. 639 and 643, 42 U.S.C.A. 1011(b), 1107(b).

[Footnote 7] Nothing to suggest tax avoidance appears in these records.

[Footnote 8] Treasury Regulation 90, promulgated under Title IX of the Social Security Act, Art. 205:

> 'Generally the relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done . * * * The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor, not an employee.
> 'If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if two individuals in fact stand in the relation of employer and employee to each other, it is of no consequence that the employee is designated as a partner, coadventurer, agent, or independent contractor.
> 'The measurement, method, or designation of compensation is also immaterial, if the relationship of employer and employee in fact exists.
> 'Individuals performing services as independent contractors are not employees. Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.' 26 C.F.R. 400.205. See also Treasury Regulation 91, 26 C.F.R . 401.3.

[Footnote 9] The citation of these cases does not imply approval or disapproval of the results. The cases do show the construction of the regulation by the agency. United States v. Mutual Trucking Co., 6 Cir., 141 F.2d 655; Jones v. Goodson, 10 Cir., 121 F.2d 176; Magruder v. Yellow Cab Co., 4 Cir ., 141 F.2d 324, 152 A.L.R. 516; Texas Co. v. Higgins, 2 Cir., 118 F.2d 636; American Oil Co. v. Fly, 5 Cir., 135 F.2d 491, 147 A.L.R. 824; Glenn v. Standard Oil Co., 6 Cir., 148 F.2d 51.

See also note 2.

[Footnote 10] Gregory v. Helvering, 293 U.S. 465, 97 A.L.R. 1355; Griffiths v. Helvering, 308 U.S. 355 ; Higgins v. Smith, 308 U.S. 473 ; Helvering v. Clifford, 309 U.S. 331 .

[Footnote 11] United States v. Silk, 10 Cir., 155 F.2d 356, 358Ÿ359: 'But even while they work for appellee they are not subject to his control as to the method or manner in which they are to do their work. The undisputed evidence is that the only supervision or control ever exercised or that could be exercised over the haulers was to give them the sales ticket if they were willing to take it, and let them deliver the coal. They were free to choose any route in going to or returning. They were not required even to take the coal for delivery.

> 'We think that the relationship between appellee and the unloaders is not materially different from that between him and the haulers. In response to a question on cross examination, appellee did testify that the unloaders did what his superintendent at the coal yard told them to do, but when considered in the light of all his testimony, all that this answer meant was that they unloaded the car assigned to them into the designated bin. * * *
> 'The undisputed facts fail to establish such reasonable measure of direction and control over the method and means of performing the services performed by these workrs as is n ecessary to establish a legal relationship of employer and employee between appellee and the workers in question.'

Greyvan Lines v. Harrison, 7 Cir., 156 F.2d 412, 414Ÿ416. After stating the trial court's finding that the truckmen were not employees, the appellate court noted:

> 'Appellant contends that in determining these facts the court failed to give effect to important provisions of the contracts which it asserts clearly show the reservation of the right to control over the truckmen and their helpers

as to the methods and means of their operations which, it is agreed, furnish the test for determining the relationship here in question . * * *' (Continued on p. 717)

It then discussed the manual and concluded:

'While it is true that many provisions of the manual, if strictly enforced, would go far to establish an employer-employee relationship between the Company and its truckmen, we agree with appellee that there was evidence to justify the court's disregarding of it. It was not prepared until April, 1940, although the tax period involved was from November, 1937, through March, 1942, and there was no evidence to show any change or tightening of controls after its adoption and distribution; one driver testified that he was never instructed to follow the rules therein provided; an officer of the Company testified that it had been prepared by a group of three men no longer in their employ, and that it had been impractical and was not adhered to.'

After a discussion of the helper problem, this statement appears: ' * * * the Company cannot be held liable for employment taxes on the wages of persons over whom it exerts no control, and of whose employment it has no knowledge. And this element of control of the truckmen over their own helpers goes far to prevent the employer-employee relationship from arising between them and the Company. While many factors in this case indicate such control as to give rise to that relationship, we think the most vital one is missing because of the complete control of the truckmen as to how many, if any, and what helpers they make use of in their operations. * * *'

[Footnote 12] Cf. Grace v. Magruder, App.D.C., 148 F.2d 679.

[Footnote 13] I.R.C., chap. 9, subchap. A, 1426(b):

'The term 'employment' means any service performed * * * by an employee for the person employing him * * * exceptŸ
'(3) Casual labor not in the course of the employer's trade or business; * * *'.

[Footnote 14] Swift & Co. v. Alston, 48 Ga.App. 649, 173 S.E. 741; Holmes v. Tennessee Coal. Iron & Railroad Co., 49 La.Ann. 1465, 22 So. 403; Muncie Foundry & Machine Co. v. Thompson, 70 Ind.App. 157, 123 N.E. 196; Chicago, R.I. & P.R. Co. v. Bennett, 36 Okl. 358, 128 P. 705, 20 A.L.R. 678; Murray's Case, 130 Me. 181, 154 A. 352, 75 A.L.R. 720; Decatur R. & Light Co. v. Industrial Board, 276 Ill. 472, 114 N.E. 915; Benjamin v. Davidson-Gulfport Fertilizer Co., 169 Miss. 162, 152 So. 839.

[Footnote 15] Western Express Co. v. Smeltzer, 6 Cir., 88 F.2d 94, 112 A.L.R. 74; Industrial Commission v. Bonfils, 78 Colo. 306, 241 P. 735; Coppes Bros. & Zook v. Pontius, 76 Ind.App. 298, 131 N.E. 845; Burruss v. B. M. C. Logging Co., 38 N.M. 254, 31 P.2d 263; Bradley v. Republic Creosoting Co., 281 Mich. 177, 274 N.W. 754; Rouse v. Town of Bird Island, 169 Minn. 367, 211 N.W. 327; Industrial Commission v. Hammond, 77 Colo. 414, 236 P. 1006; Kirk v. Yarmouth Lime Co. and Insurance Co., 137 Me. 73, 15 A.2d 184; Showers v. Lund, 123 Neb. 56, 242 N.W. 258; Burt v. Davis-Wood Lumber Co., 157 La. 111, 102 So. 87; Dunn v. Reeves Coal Yards Co., Inc., 150 Minn. 282, 184 N.W. 1027; Waters v. Pioneer Fuel Co., 52 Minn. 474, 55 N.W. 52, 38 Am.St.Rep. 564; Warner v. Fullerton-Powell Hardwood Lumber Co., 231 Mich. 328, 204 N.W. 107; Frost v. Blue Ridge Timber Corp., 158 Tenn. 18, 11 S.W.2d 860; Lee v. Mark H. Brown Lumber Co., 15 La.App. 294, 131 So. 697.

See particularly Singer Manufacturing Co. v. Rahn, 132 U.S. 518, 10 S. Ct. 175.

[Footnote 16] Compare United States v. Mutual Trucking Co., 6 Cir., 141 F.2d 655; Glenn v. Standard Oil Co., 6 Cir., 148 F.2d 51.

[Footnote 1] The opinion of the Circuit Court of Appeals in the Greyvan case stated, after referring to United States v. Mutual Trucking Co., 6 Cir., 141 F.2d 655: 'It is true that the facts there do not present as close a question as in the case at bar.' And see note 3.

[Footnote 2] It is not at all certain that either Silk or Greyvan Lines would not be held liable in tort, under application of the common law test, for injuries negligently inflicted upon persons or property of others by their truckers, respectively, in the course of operating the trucks in connection with their businesses. Indeed this result would seem to be clearly indicated, in the case of Greyvan particularly, in view of the fact that the trucks bore its name, in addition to other factors including a large degree of control exercised over the trucking operations. For federal cases in point see Silent Automatic

Sales Corp. v. Stayton, 8 Cir., 45 F.2d 471 (applying Missouri law); Falstaff Brewing Corp. v. Thompson, 8 Cir., 101 F.2d 301 (applying Nebraska law); Young v. Wilky Carrier Corp., D.C., 54 F.Supp. 912, affirmed 3 Cir., 150 F.2d 764 (applying Pennsylvania law). And see for a general collection of state cases, 9 Blashfield, Cyclopedia of Automobile Law and Practice, Perm.Ed., 1941, 6056.

Certainly the question of coverage under the statute, as an employee, should not be determined more narowly than that of employee status for purposes of imposing vicarious liability in tort upon an employer, whether by application of the control test exclusively or of the Court's broader ruling.

[Footnote 3] In the Silk case formal findings of fact and conclusions of law by the District Court do not appear in the record. But a 'Statement by the Court' recites details of the arrangements with the truckers and unloaders in the focus of whether Silk exercised control over them and concludes he did not; hence, there was no employer-employee relation. The opinion of the Circuit Court of Appeals, though recognizing the necessity for liberal construction of the Act, treats the facts found in the same focus of control. The court was influenced by the regulations promulgated under the Act (Reg. 90, Art. 205) and also by the Bureau of Internal Revenue (Reg. 91, Art. 3). The opinion concludes: 'The undisputed facts fail to establish such reasonable measure of direction and control over the method and means of performing the services * * * as is necessary' to create the employer-employee relation. 10 Cir., 155 F.2d 356, 359.

In the Greyvan case formal findings and conclusions were filed. The Circuit Court of Appeals, accepting the findings, concluded they did not show 'change or tightening of controls' after the company's adoption of a manual in 1940, although its provisions 'if strictly enforced, would go far to establish an employer-employee relationship * * *.' 7 Cir., 156 F. 2d 412, 415. However, it found another factor conclusive: 'While many factors in this case indicate such control as to give rise to that relationship, we think the most vital one is missing because of the complete control of the truckmen as to how many, if any, and what helpers they (may) make use of in their operations.' 7 Cir., 156 F.2d at page 416. Apparently not control of the method of performing the work in general but absence of expressly reserved right of control in a single feature became the criterion used.

United States Court of Appeals, Third Circuit.
FARMING, Inc., Appellant,
v.
John E. MANNING, Collector of Internal Revenue.

Argued Feb. 9, 1955.
Decided March 2, 1955.

Action to recover social security and unemployment taxes paid. The United States District Court for the District of New Jersey, William F. Smith, District Judge. 121 F.Supp. 252, rendered judgment for defendant, and plaintiff appealed. The Court of Appeals, Goodrich, Circuit Judge, held that work done for hog raiser by truck drivers and helpers who collected and transported kitchen waste used for hog feed on farm was not 'agricultural labor' within purview of unemployment and social security tax exemptions.

Affirmed.

Thorn Lord, Trenton, N.J., for appellant.
I. Henry Kutz, Washington, D.C. (H. Brian Holland, Asst. Atty. Gen., Ellis N. Slack, A. F. Prescott, Clarence J. Nickman, Special Assts. to the Atty. Gen., Raymond Del Tufo, Jr., U.S. Atty., Newark, N.J., on the brief), for appellee.

Before GOODRICH, McLAUGHLIN and HASTIE, Circuit Judges.

GOODRICH, Circuit Judge.
This case involves a suit to recover certain Social Security and unemployment taxes paid by the defendant to the Collector of Internal Revenue.[1] There is only one question in the case. If the work which certain employees did for the plaintiff consisted of 'agricultural labor,' the plaintiff is entitled to have his money back because agricultural labor is exempt from the coverage of the statutes involved. The district court found these employees not within the exemption and entered judgment for the defendant. D.C.N.J.1954, 121 F.Supp. 252.

The facts are simple and were stipulated. Plaintiff raises hogs on a piece of land near Secaucus, New Jersey. It is engaged in farming. This is agreed upon. The plaintiff employs twenty-six men who operate thirteen trucks for it in the operation about to be described. These men pick up table and kitchen garbage from establishments in New York with whom the plaintiff has a contract for collection. The Waldorf-Astoria leads the list. Whether the majority of this material, crumbs from the rich man's table, comes from equally well selected cuisines does not appear. At any rate the garbage is collected by these drivers and helpers, transported in trucks over to New Jersey and taken to the plaintiff's farm. But the drivers and their helpers do not feed the pigs. That is done by other employees. The trucks remain standing on the plaintiff's premises between trips.

On these facts are the employees just described engaged in agricultural labor so as to bring them outside the coverage of the statutes?

To get the answer here we first turn to the wording of the definition of agricultural labor contained in the statutes. The relevant parts for us and the only relevant parts, are 53 Stat. 1386, 26 U.S.C.A. § 1426(h)(1) and 53 Stat. 1396, 26 U.S.C.A. § 1607(l)(1), which provide in identical language:

> 'Agricultural labor. The term 'agricultural labor' includes all services performed-
>
> '(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wild life.'

The plaintiff's first argument is that the phrase 'on a farm' does not apply to all the paragraph. He says so to apply it is not only awkward but contradicts the last clause of the paragraph. We do not see any contradiction. Fur-bearing animals, as well as meat-bearing animals, are raised on farms. Advertisements to prospective chinchilla raisers even suggest they may be raised in an otherwise vacant room in one's house. Whether minks raised in captivity are 'wild life' or not we do not know. Certainly they are 'fur-bearing animals.' We see no reason for not applying the phrase 'on a farm' to everything

which comes subsequently in this paragraph number (1).

The next argument is that these workers really are performing their services 'on a farm' because the ultimate object of their journey around the pavements of New York is not to relieve the eating establishments of their garbage but to deliver it for consumption by the hogs at the plaintiff's farm. Since the object for which the men are employed is delivery of this swill to the farm, it is argued that the services performed by the employees are performed on a farm. This argument proves too much. Plaintiff would hardly suggest that if a farmer ordered a package from a store in Newark to come to him by parcel post that the post man was doing work 'on a farm' when he delivered the package. So, too, if the plaintiff bought material like swill buckets at a New York store to use on his farm but had to pay a trucker to bring them out, surely he would not contend that the trucker was engaged in agricultural labor when the engaged in agricultural labor when the goods were delivered at the plaintiff's door. Suppose that instead of owning trucks and hiring drivers itself, the plaintiff had employed a trucking firm in Secaucus to go to New York, collect the garbage, and deliver it to plaintiff's farm in Secaucus. It would not be seriously contended, we think, that the employees of the trucking firm doing this work were engaged in the agricultural labor. Yet the services are the same. Of course, there is something done on a farm when a package or any other item is delivered there. But not enough to entitle us to say that the employees' services are performed, on a farm, within the statute.

Plaintiff also points out, in his very thorough argument, that the language quoted above which defines agricultural labor does not pretend to be exclusive, but rather inclusive in the sense of outlining specific things which are agricultural labor but leaving the possibility of other things being included if the facts so indicate. We are not inclined to reject this argument because we think there is sense to it and we do not think it is answered by the legal cliche expressio unius est exclusio alterius.

But suppose we look at the situation outside the expressed inclusions of the statute. Are these men performing agricultural services? They are members of a union, and not an agricultural union either, if there is one. As of the years involved in this lawsuit the union was an affiliate of United Mine Workers of America known as United Construction Workers, Local 113. The men had a forty-hour week contract which provided for time and a half for overtime work. We think it would be a very great surprise to these truck drivers if they were told they were performing agricultural labor; almost as much as if a driver taking an interstate truck load of poultry feed from a Pennsylvania mill to lower Delaware would be surprised to learn that he was performing agricultural labor. Of course it is not everything that has to do with farming which is agricultural labor and cases which have talked this problem in other situations bring out the contrast nicely. See, for example, In re Boyer, 1917, 65 Ind.App. 408, 117 N.E. 507; Latimer v. United States, D.C.S.D.Cal.1943, 52 F.Supp. 228; Lake Region Packing Ass'n v. United States, 5 Cir., 1944, 146 F.2d 157; Batt v. United States, 9 Cir., 1945, 151 F.2d 949. To the extent that Halletz v. Wiseman, 1920, 193 App.Div. 4, 183 N.Y.S. 112, is opposed to this view, we cannot go along with it.

Finally, there is this comment to be made with regard to the nature of these statutes. These are not penal statutes nor are they, except incidentally, revenue statutes. They are to be classed under the broad, though indefinite, heading of social legislation. The classes of workers to be covered by this legislation are very broad. The exemptions are, in general, rather narrow and become more so as the scope of this legislation is widened from time to time.[2] We think that courts should not be eager to extend the scope of the exceptions by artificial construction of language broadening them beyond what Congress has prescribed.

The judgment of the district court will be affirmed.

FN1. The taxes were paid pursuant to the Federal Insurance Contributions Act, 53 Stat. 175, as amended, 53 Stat. 1381 (1939), 26 U.S.C.A. § 1400 et seq., for the period October 18, 1939 through March 31, 1944, and the Federal Unemployment Tax Act, 53 Stat. 183, as amended, 53 Stat. 1387 (1939), 26 U.S.C.A. § 1600 et seq., for the years 1940 through 1943.

FN2. It is interesting to note that while the 1950 amendments retain the basic definition of agricultural labor, 64 Stat. 532 (1950), 26 U.S.C.A. § 1426(h)(1), they limit the exemption, with qualifications not material here, to those whose remuneration is less than $50.00 in any calendar quarter. 64 Stat. 528 (1950), 26 U.S.C.A. § 1426(b)(1)(A). The 1950 amendments contain other provisions which broaden the coverage of the Acts.

Court of Appeals Division I
State of Washington

Opinion Information Sheet

Docket Number: 58664-5
Title of Case: Ruby L. Gaines, Appellant V. State Of Washington Department Of Employment Security, Respondent
File Date: 09/17/2007

SOURCE OF APPEAL

Appeal from King County Superior Court
Docket No: 05-2-37351-2
Judgment or order under review
Date filed: 07/21/2006
Judge signing: Honorable Linda Lau

JUDGES

Authored by C. Kenneth Grosse
Concurring: H Joseph Coleman
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RUBY L. GAINES,	)	
	)	No. 58664-5-I
Appellant,	)	
	)	DIVISION ONE
v.	)	
	)	PUBLISHED OPINION
STATE OF WASHINGTON, DEPARTMENT OF EMPLOYMENT SECURITY,	)	
	)	FILED: September 17, 2007
Respondent.	)	

GROSSE, J. -- Under the Employment Security Act (Act), chapter 50.01 RCW, an otherwise eligible individual is not to be denied unemployment benefits while in commissioner approved training (CAT), or while satisfactorily progressing in a training program with the approval of the commissioner, for reasons relating to the availability for work, or by the failure to apply for or refuse to accept suitable work. Under the required liberal interpretation of the Act and the specific facts of this case, the commissioner erroneously concluded the employee/trainee was disqualified from receiving benefits

by voluntarily leaving work without good cause. We reverse the decision of the commissioner and reinstate the decision of the administrative law judge (ALJ).

FACTS

Ruby Gaines worked for King County for over 21 years. She lost her job due to a reduction in force. She applied for and received unemployment benefits from the Employment Security Department (the Department). Gaines was also granted a year of CAT. To continue to receive unemployment benefits CAT trainees are not required to (1) be available for work, (2) actively seek work while in training, or (3) accept offers of suitable work.[7] Gaines received a notice approving her application for CAT. This notice set forth a number of responsibilities, including a warning that if she took a job and quit it while in training she "could be denied benefits under the voluntary quit provisions of state law." Gaines began a course at Edmonds Community College, did well, and satisfactory progress was reported to the Department.

To gain additional income while attending CAT, Gaines undertook a part-time job with the Downtown Emergency Service Center (DESC). She worked for 11 days as a part-time, on-call shelter counselor. Gaines reported the income to the Department and her benefits were reduced accordingly.

Within days of starting this work, DESC offered Gaines full-time work at a rate of approximately half of what she was making when she left the employ of the county. Gaines never accepted this job and also quit the part-time position. Gaines left the position because she could not continue to make progress as a full-time student and work a part- or full-time job. She also decided the job was unsuitable. When Gaines told DESC of her decision to discontinue working, DESC reported the decision to the Department, and it then denied the benefits she already was receiving, including the CAT grant, and assessed an overpayment to her in benefits received in a range of approximately $1,000 to $1,200.

Gaines appealed the denial of benefits and the assessment. The ALJ for the Department overturned the holding and determined that Gaines' attempt at the part-time job for 11 days did not disqualify her from receiving benefits. The ALJ concluded that Gaines departure from the part-time job constituted a job refusal of an unsuitable position as opposed to a voluntary quit situation.

DESC appealed the ALJ's decision to the commissioner. The commissioner accepted the ALJ's findings of fact but rejected the ALJ's conclusions. The commissioner concluded that Gaines' part-time, on-call employment at DESC for 11 days constituted acceptance of an offer of employment and that she voluntarily quit that employment. The commissioner determined that in order for Gaines to keep her benefits she could only quit for good cause. Applying the 10 exclusive circumstances considered to be "good cause" at the time of his decision,[8] the commissioner determined that Gaines voluntarily quit the position without good cause.

Gaines appealed to the King County Superior Court. The superior court affirmed the decision of the commissioner. From that decision, Gaines appeals.

The facts of this case are unusual and we limit our holding to those presented. Here, the ALJ found and the commissioner agreed to the following paraphrased facts:

> 1. Ruby Gaines received a determination that her training at Edmonds Community College was approved as CAT. Based on that determination, she was not required to be available for work or to actively seek work so long as she remained in the approved training and met the requirements of CAT. She was not obligated to accept offers of suitable work.
>
> 2. Gaines was enrolled at Edmonds Community College on a full-time basis in a basic office skills program. She had a 3.75 grade average. Prior to enrollment in school she earned between $17.69 and $24.60 per hour in her 21 years of employment.

[7] RCW 50.20.043 (training provision of the unemployment compensation statute).
[8] RCW 50.20.050(2)(b)(i)-(x). Subsequent to the commissioner's decision, this section of the statute has been declared unconstitutional. See discussion as set forth later in this opinion.

3. In an effort to supplement her income, while attending school, Gaines took a part-time on-call position as a shelter counselor and was paid $9.75 an hour.

4. After 11 days it became clear to Gaines that her studies were suffering as a result of the job. Her priority was to complete her CAT program and obtain necessary skills to further her employment opportunities. It took her the period of almost two weeks to realize that the position was interfering with her studies.

As noted above, from these facts the ALJ and the commissioner reached different conclusions regarding whether Gaines is entitled to a continuation of benefits.

Standard of Review

The Washington Administrative Procedure Act (WAPA), chapter 34.05 RCW, governs review of a final decision by the commissioner of the Employment Security Department.[9] A party will be provided relief from an adverse administrative decision if the law is erroneously interpreted or applied by the agency or if the order is not supported by substantial evidence on the record.[10]

In reviewing an administrative decision, this court sits in the same position as the trial court, applying the WAPA standards directly to the record considered by the agency.[11] An agency's findings of fact and regulatory interpretations are granted appropriate deference.[12] However, questions of law are reviewed de novo. Whether the law was correctly applied to the facts as found by the agency is also a question of law that this court reviews de novo.[13] As stated in Overton v. Economic Assistance Authority:[14]

> Where an administrative agency is charged with administering a special field of law and endowed with quasi-judicial functions because of its expertise in that field, the agency's construction of statutory words and phrases and legislative intent should be accorded substantial weight when undergoing judicial review. . . . We also recognize the countervailing principle that it is ultimately for the court to determine the purpose and meaning of statutes, even when the court's interpretation is contrary to that of the agency charged with carrying out the law.

In other words, courts retain the ultimate responsibility for interpreting a statute or regulation.[15]

ANALYSIS

The legislature specifically sets forth that the Act is to be interpreted liberally. After accidentally removing the liberal interpretation language of the statute while amending the Act in 2004, in 2005 the legislature reinstated the language. The new section states in part that

> the legislature further finds that the system is falling short of [the Act's] goals by failing to recognize the importance of applying liberal construction for the purpose of reducing involuntary unemployment, and the suffering caused by it, to the minimum, and by failing to provide equitable benefits to unemployed workers.[16]

The legislature also added to the preamble of the Act that "this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum."[17] As a commentator on state laws regarding unemployment compensation statutes has said:

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[9] RCW 34.05.510; Tapper v. Employment Sec. Dep't, 122 Wn.2d 397, 402, 858 P.2d 494 (1993).
[10] RCW 34.05.570(3)(d), (e).
[11] Tapper, 122 Wn.2d at 402.
[12] Silverstreak, Inc. v. Dep't of Labor & Indus., 159 Wn.2d 868, 879, 154 P.3d 891(2007) (citing Everett Concrete Prods., Inc. v. Dep't of Labor & Indus., 109 Wn.2d 819, 823, 748 P.2d 1112 (1988)).
[13] Tapper, 122 Wn.2d at 403.
[14] 96 Wn.2d 552, 555, 637 P.2d 652 (1981).
[15] Washington Cedar & Supply Co., Inc. v. Dep't of Labor & Indus., 137 Wn. App. 592, 598, 154 P.3d 287 (2007) (citing Children's Hosp. & Med. Ctr. v. Dep't of Health, 95 Wn. App. 858, 864, 975 P.2d 567 (1999)).
[16] Engrossed H.B. 2255, 59th Leg., Reg. Sess., at 377 (Wash. 2005).
[17] RCW 50.01.010; Engrossed H.B. 2255, 59th Leg., Reg. Sess., at 377 (Wash. 2005) (emphasis omitted).

> Unemployment compensation statutes were enacted for the purpose of relieving the harsh economic, social and personal consequences resulting from unemployment. If these statutes are to accomplish their purpose, they must be given a liberal interpretation.[18]

The ALJ determined Gaines had good cause to refuse the employment, and that although Gaines initially undertook a part-time, on-call job with DESC, it only took her a short time to determine it was unsuitable for her, especially as a student in the CAT.[19] The ALJ concluded Gaines was not even obligated to accept suitable positions while in CAT, so given the circumstances, the ALJ found that Gaines certainly was not obligated to accept an unsuitable position. Therefore, the ALJ held Gaines was not disqualified from receiving benefits pursuant to former RCW 50.20.100[20] and RCW 50.20.080.[21]

The commissioner disagreed. In reversing the decision of the ALJ, the commissioner concluded that by working for 11 days, Gaines accepted an offer of employment, at which point RCW 50.20.080 (disqualification for refusal to work), and the suitability factors of RCW 50.20.100, were no longer applicable. Because Gaines accepted employment and then quit, the commissioner determined that the case must necessarily be decided under RCW 50.20.050(2).[22] That statute provides that unless good cause is established for quitting work, a claimant is disqualified from benefits. The commissioner noted there were 10 exclusive circumstances providing good cause for quitting work under the statute, none of which admittedly were in play for Gaines. Thus, the commissioner concluded that good cause was not established, and Gaines was disqualified from receiving benefits under the disqualification for voluntarily leaving work without good cause provision of RCW 50.20.050(2)(a).[23] The commissioner remanded the case to the Department to determine the proper amount of overpayment.

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[18] 3A Norman J. Singer, Sutherland Statutory Construction § 74.7, at 921-23 (6th ed. 2003) (footnotes omitted) (citing cases from 35 states, including Employees of Pac. Maritime Ass'n v. Hutt, 88 Wn.2d 426, 562 P.2d 1264 (1977)).

[19] RCW 50.20.043 is an eligibility section for those in CAT programs. It states in pertinent part:

> No otherwise eligible individual shall be denied benefits for any week because the individual is in training with the approval of the commissioner, nor shall such individual be denied benefits with respect to any week in which the individual is satisfactorily progressing in a training program with the approval of the commissioner by reason of the application of RCW 50.20.010(1)(c), 50.20.080, or 50.22.020(1) relating to availability for work and active search for work, or failure to apply for or refusal to accept suitable work.

[20] Former RCW 50.20.100 provides in relevant part:

> (1) Suitable work for an individual is employment in an occupation in keeping with the individual's prior work experience, education, or training. . . . In determining whether work is suitable for an individual, the commissioner shall also consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and such other factors as the commissioner may deem pertinent, including state and national emergencies.

[21] RCW 50.20.080 provides in pertinent part:

> An individual is disqualified for benefits, if the commissioner finds that the individual has failed without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner, or to accept suitable work when offered the individual, or to return to his or her customary self-employment (if any) when so directed by the commissioner. Such disqualification shall begin with the week of the refusal and thereafter for seven calendar weeks and continue until the individual has obtained bona fide work in employment covered by this title and earned wages in that employment of not less than seven times his or her suspended weekly benefit amount.

[22] RCW 50.20.050(2) states in pertinent part:

> With respect to claims that have an effective date on or after January 4, 2004:
> (a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause . . . .

[23] After the commissioner's decision issued in this case, Batey v. Employment Sec. Dep't, 137 Wn. App. 506, 513-14, 154 P.3d 266 (2007) invalidated, as unconstitutional, the Laws of 2006 (Laws of 2006, ch. 12, § 1) reenacting the Laws of 2003 (Laws of 2003, 2d Spec. Sess., ch 4, § 4) amending RCW 50.20.050 to establish the 10 exclusive good cause reasons for voluntarily quitting employment without becoming disqualified for unemployment benefits. Thus, even if we were to agree with the commissioner that this case must only be decided under the voluntary quit rules, which we do not,

But the commissioner's decision provides no authority for his determination that once Gaines undertook work, she could quit only for good cause. The commissioner's decision is particularly troublesome given (1) the legislature's intent that the Act be liberally construed, (2) the fact that Gaines was in approved training under the training section of the statute (RCW 50.20.043) and, (3) that she argued the unsuitability of the employment. The commissioner claimed he was not required to consider the suitability of the work under RCW 50.20.100.

On the other hand, the ALJ appropriately considered the suitability of the work under the statute and correctly determined that Gaines refused to work as a part- or full-time on-call counselor, after a short period, because the work was unsuitable. The ALJ was correct in concluding that Gaines' leaving work after 11 days more properly constituted a refusal to work as allowed under the training provisions. This refusal does not disqualify Gaines from receiving benefits. The commissioner's argument that he did not adjudicate the matter under the work refusal statute, RCW 50.20.080, because it does not apply once a claimant accepts work, begs the question and the stated purposes of the Act. It is because Gaines showed that the work was unsuitable, that the ALJ correctly found she could refuse the work. Contrary to the commissioner's argument that the ALJ did not make any findings as to the suitability of the job, the ALJ specifically concluded the part-time job was unsuitable.

We point out that neither the commissioner nor the ALJ cited RCW 50.20.118, which discusses unemployment while in approved training. The statute sets forth:

> (1) Notwithstanding any other provision of this chapter, an otherwise eligible individual shall not be denied benefits for any week because he or she is in training approved under section 236(a)(1) of the Trade Act of 1974, P.L. 93-618, nor may that individual be denied benefits for any such week by reason of leaving work which is not suitable employment to enter such training, or for failure to meet any requirement of federal or state law for any such week which relates to the individual's availability for work, active search for work, or refusal to accept work.[24]

The position taken by the commissioner fails to recognize the statutory scheme that an individual may not be denied benefits by reason of leaving unsuitable employment to enter (or stay in) training, or to refuse work. At the very least, a liberal interpretation of the overall employment security statutory scheme requires the commissioner to determine the suitability of the employment, especially in light of the training provision of RCW 50.20.043 and the suitability factors of RCW 50.20.100.

The commissioner relies on the prior employment security decision of In re Stewart,[25] to support his conclusion. In Stewart, the commissioner held that those who quit suitable employment in order to engage in approved training were disqualified from receiving benefits. But we find Stewart to be inapposite to his case because it does not speak to those who quit unsuitable employment.[26]

Among other reasons, the commissioner's failure to consider the suitable work factors led to an erroneous interpretation of the Act. We reverse the decision of the commissioner and reinstate the decision of the ALJ.

Gaines seeks attorney fees and costs. She asks for fees from the unemployment compensation administration fund. Because we agree that the commissioner erroneously interpreted the Act, making Gaines the prevailing party on appeal,

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the case would have to be remanded for a determination under RCW 50.20.050 as it existed in 2002. Considering our decision, a remand is unnecessary.

[24] RCW 50.20.118 (emphasis added).

[25] In re Stewart, Empl. Sec. Comm'r Dec. 948 (1973).

[26] It is interesting to note that the Stewart decision ultimately granted benefits to the claimant because he had good cause for quitting the job. This good cause was the commissioner's determination that the job quit was unsuitable. There, the commissioner indicated he was required by the suitable work factors of RCW 50.20.100 to consider prior training experience and earnings among other factors. Thus, in Stewart the commissioner determined that the janitorial work for an aircraft mechanic was not suitable work and to hold otherwise would be to subvert some of the basic purposes of the Act.

she is entitled to reasonable attorney fees for proceedings in the superior court and this court.[27] Gaines must comply with RAP 18.1. Contrary to the argument of counsel for Gaines, there is no award of fees from the state fund for proceedings at the administrative level.[28]

The commissioner's decision is reversed and the case is remanded for reinstatement of benefits as determined by the ALJ, and for an award of attorney fees and costs at the superior and appellate court levels.

[27] RCW 50.32.160; Ancheta v. Daly, 77 Wn.2d 255, 265-67, 461 P.2d 531 (1969); Barker v. Employment Sec. Dep't, 127 Wn. App. 588, 596, 112 P.3d 536 (2005) (citing Albertson's, Inc. v. Employment Sec. Dep't, 102 Wn. App. 29, 47, 15 P.3d 153 (2000)).
[28] Ancheta, 77 Wn.2d at 266-67.

APPENDIX C

Summary of Published Washington Court Decisions Citing "Liberal Construction" Clause and Title 50 RCW

Citation (Washington State Supreme Court decisions in **bold**)	**Year**	**Subject**	**Summary of Court's Discussion of Liberal Construction**
Cowiche Growers v. Bates **10 Wn.2d 585**	1941	Agricultural labor — Coverage under Act	In the case of a statute of wide application, such as UI, it is the general field of its operation and effect which is to be regarded rather than its application to individual exceptional cases, and appropriateness to the general situation is the predominant consideration. The Act is to be liberally construed to reduce involuntary unemployment. The language of the statute refers to workers "on a farm" and does not include warehouse packers. It was not the intent of the legislature to exclude them from coverage of the Act.
In the Matter of Foy **10 Wn.2d 317**	1941	Commissioner as aggrieved party	The preamble declares the concern of the public with involuntary unemployment and mandates liberal construction. It is the commissioner's duty to administer the Act in accordance with its terms. Although the commissioner has no personal interest in this action, he is vitally concerned with carrying out his duties in accordance with the terms of the statute, in collecting taxes from liable employers, and in paying claimants those benefits they are entitled to receive. It must be held that the commissioner has the right, as an aggrieved party, to appeal to this court from judgments of the superior court on matters of construction, interpretation, and application of the act.
Wicklund v. Comissioner **18 Wn.2d. 206**	1943	Labor dispute	To effectuate the purpose of reducing unemployment to a minimum, the Act shall be liberally construed. There is no language in the Act which infers the legislature contemplated requiring that a claimant be a union member, refrain from joining a labor organization, resign from or transfer from one labor organization to another. The legislature never intended that benefits should be denied to employees because of a labor dispute which they did not initiate.
In the Matter of Jullin **23 Wn.2d 1**	1945	Right to benefits	While the unemployment compensation act is remedial in nature and, by its express terms, enjoins a liberal construction of its provisions, nevertheless those who claim rights under it should be held to strict proof of their right to receive benefits provided by the act.
In the Matter of Bartel **60 Wn.2d 709**	1962	Availability—Self Employment	Citing AGO 53-55 No. 189, a person isn't automatically ineligible for benefits simply because he engages in some remunerative activity of a personal nature. Each case must be examined to determine if the individual meets the eligibility requirements of the Act.

Citation (Washington State Supreme Court decisions in **bold**)	Year	Subject	Summary of Court's Discussion of Liberal Construction
Bale, Boeing v ESD **63 Wn.2d 83**	1963	Voluntary quit—good cause	Courts may consider the preamble to an act in determining legislative intent, but it is not controlling and must be read in context with the statute. When the legislature's intention is neither clear, unambiguous, nor well understood, courts may turn to other means to determine intent. The preamble applies to persons involuntarily unemployed, yet RCW 50.20.050 allows benefits to those who voluntarily quit with good cause. Thus the legislative intent of the preamble is neither clear, unambiguous, nor well understood when considered together with the quit statute. (The court looked to legislative history.)
Amburn v. ESD **81 Wn.2d 241**	1972	Effect of new legislation	Amendments apply prospectively, not retroactively, unless such legislative intent is clearly expressed. The underlying purpose in judicial interpretation is to effectuate the intent of the legislature. Courts are not controlled by the literal meaning of the statute, but the spirit or intent of the law prevails over the letter, and a statute should not be construed in a manner that leads to gross injustice or absurdity. Legislative intent is ascertained from the text as a whole. The Act requires liberal construction. It was not the intent of the 1970 legislature to exclude persons receiving benefits at the time the amendments took effect. Rather, it is clear benefits were to be improved.
Allen v. ESD **83 Wn.2d 145**	1973	Misconduct & fraud penalties	Court can't read into a plain statute that which is not there nor engage in any other form of statutory construction. Legislation is remedial, requiring liberal construction, so we may assume the penalties provided therein are sufficient, even though the periods of disqualification overlap. (10 vs. 26 wks)
Warmington v. ESD 12 Wn. App. 364	1974	Students—Construction of statute	The court construes the Act to be remedial legislation and holds that it should be liberally construed to the end that intended benefits under its provisions be received by employees, and the Act is to be strictly construed against an employer claiming an exemption from liability.
Ayers v. ESD **85 Wn.2d 550**	1975	Voluntary Quit—Good cause	Good cause for quitting may include compelling personal reasons. The preamble indicates the purpose of the system is to relieve economic insecurity, and the Act should be liberally construed. Quitting work to move to an area where the other spouse is employed may be a compelling personal reason that constitutes the requisite good cause.
Schuffenhauer v. ESD **86 Wn.2d 233**	1975	Coverage under Act	The act should be liberally construed to accomplish the objective of alleviating the adverse effects of involuntary unemployment. An exemption from a taxation statute must be strictly construed in favor of the application of the tax, and the burden of proof is on the party claiming the exemption. Closer scrutiny is required where the taxes are imposed for the benefit of a particular group which society seeks to aid, such as unemployed workers.

Citation (Washington State Supreme Court decisions in **bold**)	Year	Subject	Summary of Court's Discussion of Liberal Construction
Cowles Publishing Co v. ESD 15 Wn. App. 590	1976	Voluntary Quit—Fault	The act is for the benefit of persons unemployed through no fault of their own and is to be liberally construed. The apparent incongruity in compensating both the involuntarily unemployed and the voluntarily unemployed for good cause can be harmonized. Benefits will be paid to the voluntarily unemployed when the reason for unemployment is compelling, i.e., it forces or constrains a person to quit her employment against her will. Benefits cannot be awarded on a comparative fault basis. Fault generally lies in one of three categories: (1) employer fault, (2) third-party fault, and (3) employee fault. When any fault of unemployment lies with the claimant, the claimant is disqualified from receiving benefits.
Dairy Valley Products v. ESD 15 Wn. App. 769	1976	Agricultural labor — Coverage under Act	Any exemption from taxation must be strictly construed in favor of application of the tax. Closer scrutiny is applied when the tax in question is for the benefit of a particular group which society is attempting to assist. The Act is to be liberally construed to accomplish the objective of alleviating the adverse effects of involuntary unemployment.
Kenna v. ESD 14 Wn. App. 898	1976	Availability—Self Employment	An individual's eligibility for benefits must be determined on the specific facts of the case and in light of the legislative mandate that provisions of the Act are to be liberally construed. Nothing in the Act prohibits claimants from trying to set up a business while retaining eligibility for benefits, as long as the activities don't infringe on other requirements of the Act (availability, job search, etc.).
Pacific Maritime Assn Employees v. Hutt **88 Wn.2d 426**	1977	Labor dispute	The policy of the Act requires that it be liberally construed to protect workers who are involuntarily unemployed. The clear meaning of the language is to confine disqualification to those who are creating the labor dispute or participating therein in order to enforce their demands.
Shell Oil v. Brooks **88 Wn.2d 909**	1977	Voluntary Quit	The act provides a comprehensive scheme of compensation designed to mitigate the adverse impact of unemployment. While easing the burden of involuntary unemployment is its primary purpose, it does contain provisions allowing compensation to those who leave their positions voluntarily. The Act is not controlling in the face of provisions of law allowing benefits to person who leave their jobs voluntarily.

Citation (Washington State Supreme Court decisions in **bold**)	Year	Subject	Summary of Court's Discussion of Liberal Construction
Belgarde v. Brooks 19 Wn. App. 571	1978	Labor dispute	The court's duty in interpreting a statute is to give effect to legislative intent. When the intent is not plain, it is determined by reading the statute as a whole while avoiding strained or absurd results. The preamble of a statute may be considered to resolve any ambiguities within the statute and, if possible, the statute will be construed consistent with the purpose expressed in the preamble. As a general rule, if there is a broader proposition expressed in the act than is suggested in the preamble, the law will prevail over the preamble. But if the law can be construed consistent with the purpose declared in the preamble, it will. The statutory disqualifications which apply for a full week are based on fault. Participation in a labor dispute does not imply fault. Workers may be disqualified for a labor dispute, but accrued benefits should not be lost without fault. Benefits allowed for the 3 days of the week the claimants were laid off, but denied for the 1 day involving a labor dispute.
Daily Herald v. ESD **91 Wn.2d 559**	1979	Personal Services – Coverage under Act	The term "personal service" is not limited to acts done **personally** by an individual for the benefit of another. Rather, it is whether the services were performed **for** others **or** for their benefit. The first would limit, rather than expand, the scope of the Act, when the legislature intended that it be liberally construed.
Devine v. ESD 26 Wn. App. 778	1980	Late appeal	The good cause test of RCW 50.32.075 for waiving the time limitations for filing an administrative appeal should be liberally construed in favor of the claimant. A court may consider the length of the delay, the prejudice to the parties, and whether the error was excusable.
Rasmussen v. ESD 30 Wn. App. 671	1981	Late appeal	Citing *Devine*, upheld denial of good cause for late filing. **DISSENT**: In light of the shortness of the time to appeal, the commissioner should have applied the good cause standard liberally to avoid unfairness to this LAY claimant. (NOTE: Upheld by Supreme Court; see below)
Nelson v. ESD 31 Wn. App. 621	1982	Misconduct	Citing *Willard*, the court held that because the misconduct provision is penal in nature, it is to be construed liberally in favor of the employee. Misconduct must be viewed as involving some standard of right or wrong. There is an express and implied contract between employer and employee which sets the bounds of acceptable conduct, and by exclusion defines misconduct. Violations of this implied code of conduct must be intentional or grossly negligent. The court set guidelines by which off-duty acts constitute misconduct (upheld by state Supreme Court without citing liberal construction).
Yamauchi v. ESD **96 Wn.2d 773**	1982	Voluntary Quit	The law must be liberally construed. The term "marital status" does not refer only to persons who are already married. A person who leaves work to get married and move to a place where it would be impractical to commute to her old job leaves work because of marital status.

Citation (Washington State Supreme Court decisions in **bold**)	Year	Subject	Summary of Court's Discussion of Liberal Construction
Rasmussen v. ESD **98 Wn.2d 846**	1983	Late appeal	The statute requires that appeals be filed within 10 days. The legislative intent that this limitation be applied except for good cause will not be undercut by a liberal or flexible interpretation of the statute by the courts.
Hussa v. ESD 34 Wn. App. 857	1983	Voluntary Quit—Good Cause	The purpose of the act is to combat involuntary unemployment and it is to be liberally construed. The act operates on a fault principle. Benefits may be awarded to the voluntarily unemployed if the employee quits for good cause and the fault of the unemployment does not lie with the claimant. Good cause for terminating employment exists if an ordinarily prudent person would have taken the same action under the circumstances.
Peterson v. ESD 42 Wn. App. 364	1985	Misconduct	Application of the misconduct statute must take place with regard for certain policy considerations. The preamble provides for the setting aside of reserves for the benefit of persons UNEMPLOYED THROUGH NO FAULT OF THEIR OWN. Consideration must be given to the intent behind the employee's actions. But intent must be balanced with the notion that the disqualification, being penal in nature, is to be construed liberally in favor of the employee by excluding cases not clearly intended to be within the exception.
Scully v. ESD 42 Wn. App. 596	1986	Late appeal	Good cause for filing late appeals must consider the length of the delay, the prejudice to the parties, and the excusability of the delay. The receipt of misleading communications from the department can make a delay excusable and the length of the delay is measured from the date the claimant realized the need for an appeal. The Act is to be liberally construed to reduce the suffering caused by involuntary unemployment. The legislature takes for granted that those who are entitled to unemployment are suffering. Thus, if the claimant is entitled to unemployment benefits, denial of these benefits is undoubtedly prejudicial. The three prong test for establishing good cause for the late appeal is established in this case.
Shaw v. ESD 46 Wn. App. 610	1987	Misconduct	The evidence that claimant was tardy 14 times in 15 months does not amount to misconduct necessary to deny benefits. His conduct cannot be said to show willful or wanton disregard of an employer's interests. The court reached this conclusion keeping in mind both the principle that due deference is accorded agency's interpretations of statutes in the area of its expertise and the principle that the disqualification provisions of the Act are liberally construed in favor of the employee.
Macey v. ESD **110 Wn.2d 308**	1988	Misconduct	A particular statute is construed in light of the overall legislative policy behind the act of which it is a part. Disqualification for misconduct is consistent with the policy of the act to benefit those unemployed through no FAULT of their own, with liberal construction to reduce INVOLUNTARY unemployment.

Citation (Washington State Supreme Court decisions in **bold**)	Year	Subject	Summary of Court's Discussion of Liberal Construction
Gibson v. ESD 52 Wn. App. 211	1988	Misconduct	The legislature has declared that the act shall be liberally construed to provide benefits for persons unemployed through no fault of their own. The fault principle underlies a number of statutory grounds for disqualification, including misconduct. Citing *Macey*, errors of judgment in isolated instances do not constitute misconduct under the act.
Harvey v. ESD 53 Wn. App. 333	1988	Misconduct	Although the statute is to be liberally construed, the legislative intent of the Act is to provide for those who become unemployed through no fault of their own. Misconduct occurs when an employer's order that is reasonable under the circumstances is refused or violated by the employee. Cites *Macey* and *Gibson*.
Johnson v. ESD **112 Wn.2d 172**	1989	Pensions	Where the statutory language is plain, the statute is not open to construction or interpretation. A court may choose not to give a statutory term its common meaning if to do so would be absurd or incongruous in light of the public policy underlying the statute. The legislature's statement of the public policy underlying the Act is the compulsory setting aside of unemployment reserves to alleviate the many adverse effects of involuntary unemployment. Further, the act is to be liberally construed in order to accomplish this objective.
Becker v. ESD 63 Wn.App. 673	1991	Misconduct	An individual's inability to perform her job, even after warnings, may warrant termination of employment but does not constitute disqualifying misconduct for purposes of UI benefits. The Act is to be liberally construed to alleviate the suffering caused by involuntary unemployment.
Wells v. ESD 61 Wn. App. 306	1991	Late appeal	In light of the mandate to liberally construe the statute in favor of unemployed workers, the court is unwilling to conclude that the Legislature intended to deprive the unsophisticated applicant of the opportunity to have his benefits claim heard on the merits based on a 1-day delay which occasioned no prejudice.
Shoreline Community College v. ESD **120 Wn.2d. 394**	1992	Waiver of Coverage (Pelto)	A person protected by a statutorily created private right that serves a public policy purpose cannot waive the right either individually or through the collective bargaining process. The mandate of liberal construction requires that courts view with caution any construction that would narrow the coverage of the UI laws. Thus, the court construes RCW 50.40.010 as precluding employers from accepting any agreement from an individual to waive his or her right to UI benefits, including agreements negotiated through the collective bargaining process. This construction effectuates the Act's purpose of insuring compensation to all qualified individuals.
Tapper v. ESD 66 Wn. App. 448	1992	Misconduct	Inability to get along with co-workers or to perform job duties as instructed may be sufficient to warrant termination of employment, but it is insufficient to constitute disqualifying misconduct for purposes of UI benefits. The Act is to be liberally construed to alleviate the suffering caused by involuntary unemployment.

Citation (Washington State Supreme Court decisions in **bold**)	**Year**	**Subject**	**Summary of Court's Discussion of Liberal Construction**
Nielsen v. ESD 93 Wn. App. 21	1998	Voluntary Layoff -- Authority of Department's Rules	The Employment Security Act is a highly remedial statute. Its provisions are liberally construed to afford benefits to unemployed workers and its disqualifying exceptions are narrowly confined. Courts view with caution any construction that would narrow the coverage of the unemployment compensation laws.
Penick v. ESD 82 Wn. App. 30	1999	Contract drivers—Coverage under Act	The Act's purpose of mitigating the negative effects of involuntary unemployment on the individual and society can only be met by applying the insurance principle of sharing the risks and systematic accumulation of funds during periods of employment. To accomplish this, courts must liberally construe the statute, viewing with caution any construction that would narrow coverage.
Albertson's v. ESD 102 Wn.App. 29	2000	Misconduct	The act is to be liberally construed to reduce involuntary unemployment and the suffering caused thereby. An employee discharged for work-related misconduct is not disqualified from benefits under RCW 50.20.060 and RCW 50.04.293 unless the misconduct was (1) in willful disregard of the employer's interests and (2) harmful to the employer's business.
Bauer v. ESD 126 Wn. App. 468	2005	Misconduct—Constructive Quit	When words in a statute are plain and unambiguous, statutory construction is not necessary, and the court must apply the statute as written. The department's interpretation of the law (constructive quit) is a narrow construction of the statute, which is contrary to the statute's history of liberal construction. Adopting the doctrine of voluntary constructive quits would usurp the legislative function.
Delagrave v. ESD 127 Wn. App. 596	2005	Waiver of overpayment	When the legislature mandates liberal construction in favor of the worker, the court should not narrowly interpret provisions to the worker's disadvantage when the statutory language does not suggest that such a narrow interpretation was intended (citing *Shoreline* and L&I case). Although claimant did not specifically ask for a waiver, he adequately identified the nature of his request and the department should have ruled on it.
Gaines v. ESD Court of Appeals, Division I	2007	Commissioner Approved Training—Quit v. Refusal to Work	State law permits an individual who is satisfactorily progressing in approved training to refuse to accept suitable work. Although the claimant had worked 11 days for the employer, under the required liberal interpretation of the Act the commissioner erred by finding the claimant disqualified for leaving work without good cause. Rather, because the work was unsuitable, the separation should be treated as a refusal to work and the claimant allowed benefits.